

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN T. SESSIONS; HISTORIC FLIGHT  
FOUNDATION, a Washington nonprofit  
corporation; and FWF LTD., a Washington  
corporation,

Plaintiffs,

v.

UMB BANK, N.A., a foreign corporation,

Defendant.

CASE NO. 2:21-cv-01490-LK

ORDER TO SHOW CAUSE  
REGARDING JURISDICTION  
AND DENYING MOTION FOR  
TRO AND INJUNCTIVE RELIEF

After previously informing this Court that it would file a motion to amend its counterclaims after judgment was issued in the North Dakota action, Dkt. No. 39 at 2, Defendant UMB Bank, N.A. has instead filed an Emergency Motion for Temporary Restraining Order and Permanent Injunction, Dkt. No. 41. For the reasons below, the Court denies UMB's motion without prejudice and orders UMB to show cause why this Court has jurisdiction over this case.

The standard for issuing a TRO is "substantially identical" to that required for a preliminary injunction. *See Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). "A plaintiff seeking

1 a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely  
2 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in  
3 his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*,  
4 555 U.S. 7, 20 (2008). Because “an injunction is not a cause of action, but rather a remedy,” a  
5 motion for a TRO and injunctive relief must rest on a meritorious cause of action. *Krusee v. Bank*  
6 *of Am., N.A.*, No. C13-824-RSM, 2013 WL 3973966, at \*5 (W.D. Wash. July 30, 2013).

7 Here, both Plaintiffs and UMB filed causes of action for prejudgment relief, and UMB also  
8 filed a claim for recognition and enforcement of an order from the North Dakota court. Dkt. No.  
9 1-1 at 5–10; Dkt. No. 12 at 9–11. The Court subsequently granted Plaintiffs’ motion to dismiss  
10 UMB’s latter claim, leaving two of UMB’s claims alive. Dkt. No. 30. Importantly, the Court  
11 observed that UMB’s claim for appointment of a receiver was not a standalone remedy and instead  
12 was dependent upon some other pending cause of action. *Id.* at 12; *see also Power Support (USA),*  
13 *Inc. v. Power Support, Ltd*, No. C12-10900-BRO-FFMX, 2013 WL 12113231, at \*4 (C.D. Cal.  
14 June 7, 2013) (“[T]he appointment of a receiver is ancillary to some other pending cause of action,  
15 and is not a stand-alone remedy where no other relief is sought.”). In other words, UMB’s  
16 receivership request was dependent upon UMB’s remaining cause of action for a prejudgment writ  
17 of attachment. Dkt. No. 12 at 10.

18 Judgment has now been entered in the North Dakota action, Dkt. No. 42 at 6–14, mooted  
19 UMB’s claim for a prejudgment writ of attachment. UMB’s request for receivership dies along  
20 with it. Plaintiffs’ claims, which sought to avoid prejudgment remedies, Dkt. No. 1-1, are also  
21 moot. *See, e.g., Genomatica, Inc. v. Icelandic Genomic Ventures Holding, S.A.R.L.*, No. C12-  
22 0268-GPC-BGS, 2013 WL 417321, at \*5 (S.D. Cal. Jan. 31, 2013) (grant of default judgment  
23 mooted plaintiff’s motion for prejudgment writ of attachment).

1 Because none of UMB's claims survive, it cannot show a probability of success on the  
2 merits. *See, e.g., Jaax v. United States*, No. C08-6666-MMM-AGRX, 2008 WL 4630559, at \*2  
3 (C.D. Cal. Oct. 17, 2008) (denying *ex parte* motion for a TRO where movant did "not show a  
4 probability of success on the merits because his complaint, as presently formulated, fails to state a  
5 claim on which relief may be granted"); *Smith v. California Dep't of Corr. & Rehabs.*, No. C18-  
6 2942-KJM-ACP, 2020 WL 1503431, at \*4 (E.D. Cal. Mar. 30, 2020) ("[W]ithout a viable  
7 complaint the court cannot assess plaintiff's likelihood of success on the merits[.]"); *Most v.*  
8 *Pritzker*, No. C20-738-SMY, 2020 WL 4582593, at \*2 (S.D. Ill. Aug. 10, 2020) (denying motion  
9 for TRO and preliminary injunction because, "[a]s Plaintiff has failed to state a viable claim for  
10 relief, he has no reasonable likelihood of success on the merits"). Accordingly, the Court DENIES  
11 UMB's motion without prejudice and ORDERS UMB to show cause no later than April 22, 2022  
12 why this Court has jurisdiction over this case.

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14 Dated this 8th day of April, 2022.

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16 Lauren King  
17 United States District Judge  
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